Sheehy Enterprizes, Inc. *and* Laborers' International Union of North America, State of Indiana District Council, a/w Laborers' International Union of North America. Case 25–CA–30583

January 30, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

On September 3, 2008, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed limited cross-exceptions and a supporting brief.[1] The General Counsel, the Union, and the Respondent each filed answering briefs, and the Respondent filed a reply brief.[2]

The National Labor Relations Board[3] has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as discussed below, and to adopt the recommended Order as modified.[4]

The judge found that the Respondent violated Section 8(a)(5) and (1) by refusing to adhere to, and repudiating, the collective-bargaining agreement to which it agreed to be bound on May 21, 2004. In so finding, the judge determined that the terms of the "Acceptance of Working Agreement" and the collective-bargaining agreement executed by the Respondent's owner, James Sheehy, were clear and unambiguous, and covered all of the Respondent's employees and work within the Union's jurisdiction. The judge thus refused to consider parol evidence, in the form of Sheehy's hearing testimony, to determine the scope of the agreement.

The Respondent excepts to the judge's finding of the violation, asserting that the judge erred in refusing to consider Sheehy's testimony that Sheehy believed, based on the Union's alleged misrepresentation regarding the scope of the agreement, that the agreement bound him for a single project. Citing 11 *Williston on Contracts* 569–570, Sec. 33:4 (4th Ed. 1999), the Respondent contends that parol evidence is admissible in the event of fraud, mutual mistake, or duress. Therefore, Sheehy's testimony should have been considered to show that there was no meeting of the minds because of the Union's misrepresentation concerning the scope of the agreement. For the following reasons, we adopt the judge's finding of a violation and find the Respondent's exceptions without merit.[5]

The Respondent's exception amounts to a defense that the contract is void because of "fraud in the execution"—a term the Respondent does not use but which fairly encapsulates its argument.[6] In addressing the Respondent's exception, we find it unnecessary to resolve whether parol evidence is admissible under Board law to prove that defense. Even if Sheehy's testimony concerning the Union's alleged misrepresentation of the scope of the agreement were considered and credited, the Respondent has not established "fraud in the execution" and is therefore bound by the agreement. *Horizon Group*, supra at 799 fn. 10.

Sheehy's testimony does not establish that Union Business Manager David Frye misrepresented to Sheehy that he was signing an agreement covering a single project. Sheehy claimed only that Frye did *not* say anything "to the effect that by signing that Contract you were bound [on] all your jobs," and that Sheehy therefore *thought* "we were talking about a job-specific Contract." Tr. 119–120. This testimony is insufficient to establish "fraud in the execution."

As set forth in *Horizon Group*, "'[f]raud in the execution' arises when a party executes an agreement 'with

[1] The General Counsel's cross-exception requests that the Board's current practice of awarding only simple interest on backpay and other monetary awards be replaced with a practice of compounding interest on a quarterly basis. Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See *Sawgrass Auto Mall*, 353 NLRB No. 40 fn. 3 (2008).

[2] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[3] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

[4] We shall modify the judge's recommended Order to add a provision requiring the Respondent to reimburse unit employees for any expenses ensuing from its failure to make the required benefit fund contributions. *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). In addition, we shall modify the judge's recommended Order to provide for interest on any amounts due the employees, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Employees shall be made whole in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971). Amounts due the funds shall be paid in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). We shall also substitute a new notice to conform with the recommended Order as modified.

[5] Member Schaumber finds it unnecessary to pass on the Respondent's exception based on Sec. 10(b) as the Respondent did not timely raise that defense in either its answer to the complaint or at the hearing.

[6] "Fraud in the execution" occurs when a misrepresentation is made that induces a party to believe that he is assenting to a contract entirely different from the proposed contract. *Horizon Group of New England*, 347 NLRB 795, 797 (2006).

neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms.'" *Horizon Group*, supra at 797, citing *Southwest Administrators v. Rozay's Transfer*, 791 F.2d 769, 774 (9th Cir. 1986), cert. denied 479 U.S. 1065 (1987). In *Horizon Group*, the Board found that "fraud in the execution" was not established where the employer had a reasonable opportunity to read the agreement. See also *Positive Electrical Enterprises*, 345 NLRB 915, 922 (2005) (no "fraud in the execution" found where employer had the opportunity to read the one-page letters of assent).

Here, as in those cases, the Respondent had a reasonable opportunity to read and consider the agreement's character and essential terms. The Union did not deny Sheehy the opportunity to review either of the "Acceptances of Working Agreement" or the underlying collective-bargaining agreements.[7] Even assuming Sheehy did not understand what he signed, the Respondent failed to show that the Union prevented him from seeking advice of counsel "to ascertain the true nature of the document provided." *Positive Electrical Enterprises*, supra at 922. The one-page acceptance agreement signed by Sheehy specifically incorporates the full collective-bargaining agreement, which states expressly that it covers all of the Respondent's employees and work within the Union's jurisdiction. Because the Union did not deprive the Respondent of the opportunity to ascertain the true nature of the document, a finding of "fraud in the execution" is not warranted.

Alternatively, and to the extent that the Respondent is arguing that the contract should be rescinded because of Sheehy's mistake in signing it, we reject that defense, as well. In *Apache Powder*, 223 NLRB 191 (1976), the Board held that rescission for unilateral mistake is "a carefully guarded remedy reserved for those instances where the mistake is so obvious as to put the other party on notice of an error." In *Contek International,* 344 NLRB 879 (2005), presented with facts similar to those in this case, the Board rejected the employer's defense of unilateral mistake because the employer had the opportunity to read the documents but did not do so. Here, as in *Contek*, Sheehy testified that he did not read the collective-bargaining agreement referenced in the Acceptance of Working Agreement. This is not the type of obvious error that justifies rescission under *Apache Powder*, supra.

[7] Even if we were to credit Sheehy's statement that he did not receive a copy of the full agreement at the time he signed the acceptance agreement, nothing in Sheehy's testimony indicates that the Union did anything to prevent Sheehy from obtaining and reading a copy.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Sheehy Enterprizes, Inc., Indianapolis, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(b) and reletter the subsequent paragraphs.

"(b) Make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of the refusal to comply with the collective-bargaining agreements, with interest, as set forth in the remedy section of the judge's decision as modified above.

"(c) Make all contractually required benefit fund contributions, if any, that have not been made on behalf of unit employees, and reimburse unit employees for any expenses ensuing from its failure to make the required benefit fund payments, in the manner set forth in the remedy section of the judge's decision as modified above."

2. Substitute the attached notice for that of the administrative law judge.

Rebekah Ramirez, Esq., for the General Counsel.
David Swider, Esq. (Bose, McKinney & Evans), for the Respondent.
Neil Gath, Esq. (Fillenwarth, Dennerline, Groth & Towe, LLP), for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on July 21, 2008, in Indianapolis, Indiana. The complaint, which issued on April 30, 2008, and was based on an unfair labor practice charge that was filed on January 24, 2008, by Laborers' International Union of North America, State of Indiana District Council, a/w Laborers' International Union of North America (the Union), alleges that Sheehy Enterprizes, Inc. (the Respondent) granted recognition to, and entered into a 8(f) collective-bargaining agreement with, the Union, but subsequently refused to adhere to, and repudiated the agreement that it had agreed to be bound by, in violation of Section 8(a)(1)(5) of the Act.

FINDINGS OF FACT

I. JURISDICTION

Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

Respondent admits, and I find, that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE FACTS

Respondent, a concrete construction company operating in the Indianapolis, Indiana area, is owned by James Sheehy (Sheehy), and his wife. While a majority of the jobs performed by the Respondent are nonunion jobs, Respondent also contracts to perform work on union and Davis-Bacon jobs. In October 2003, the Respondent was installing concrete curbs at a job at Purdue University in Indianapolis, (the IUPUI jobsite). David Frye, business manager for the Union, testified that on October 15, 2003, he observed employees of the Respondent performing concrete work at the IUPUI jobsite. He spoke to Danny Arnold, the superintendent for Wilhelm Construction, which is a signatory to its contract, to inform him that the Respondent was a nonunion contractor and therefore Wilhelm was in violation of the agreement which prohibits subcontracting work to nonunion companies. Arnold told Frye to give him a day to talk to Sheehy. On the following day, Frye returned to the IUPUI jobsite and Arnold told him that Sheehy was willing to talk to him about signing an agreement. Frye met with Sheehy who questioned him about the work that he had that was ongoing at the time. Frye told him that any work that was ongoing or had been bid on prior to October 16, 2003, "would not be a concern [of the Union]," but any work from that day forward would be under the collective-bargaining agreement. Sheehy then signed the acceptance of working agreement, effective from April 1, 1999, to March 31, 2004, which states:

> The undersigned has read and hereby approves the Contractors-Laborers' Working Agreement by and between the State of Indiana District Council of the Laborers' International Union of North America and the Labor Relations Division of the Indiana Constructors, Inc. operating in the State of Indiana and herewith accepts same and becomes one of the Parties thereto. Any deletions, exceptions or alterations to this Acceptance will be void and of no force or effect.

Sheehy signed the acceptance agreement as president of the Respondent, listing the Respondent's office address and telephone number. Frye gave Sheehy a copy of the signed acceptance, as well as a copy of the current contract between Indiana Constructors, Inc., Labor Relations Division, (the Association), and Local Unions of Laborers' International Union of North America, State of Indiana District Council, herein the District Council, effective from April 1, 1999, to March 31, 2004. After Sheehy signed the acceptance agreement Frye went to some of the Respondent's employees who signed to join the Union and its health and welfare plan.

Sheehy testified that while the Respondent was working at the IUPUI jobsite he was told by Frye that he needed to sign up with the Union or leave the job. Frye gave him an acceptance of working agreement and he signed it on October 16, 2003. He testified[1]: "I thought we were talking about a job-specific contract," and that nothing that Frye said indicated to him that by signing the Respondent was bound to the Union contract for all its jobs. He also testified that Frye told him that work that he had previously bid would not be covered by the contract. Frye testified that the Union does not allow employers to sign one-job only contracts.

On May 21, 2004, Sheehy signed an acceptance of working agreement that is identical to the one that he signed on October 16, 2003, except the latter one is effective from April 1, 2004, through March 31, 2009, as is the agreement that the acceptance agreement provides that he is bound to. He testified that he believed that this was another "job-specific contract," rather than an agreement binding him for all jobs performed by the Respondent. He further testified that, although he signed the acceptance agreements in 2003 and 2004, he does not believe that he ever received the contracts that these acceptance agreements bound him to honor. In fact, he testified that at the time of the hearing he had not read the latest contract. He also testified that in July or August 2004, after he had completed the IUPUI job, he was called on a number of occasions by Frye saying that he wanted to help the Respondent on their projects. When Sheehy asked what he was getting at, "That's when he informed me or made me aware of the fact that . . . we were obligated as a union contractor to pay union dues on whatever project that we are working on." Sheehy told Frye that he would be happy to do that on union jobs, but he could not afford to do it on his nonunion jobs.

The Respondent paid to the Union's Fringe Benefit Fund Office for a period beginning in November 30, 2003. At that time the Respondent paid $1565 for three employees; for the period ending December 31, 2003, the Respondent paid $206 for one employee; for the period ending May 31, 2004, the Respondent paid $868 for three employees and for the period ending July 30, 2004, it paid $4000 for four employees. That was the last payment that the Respondent made to any of the Union's funds. In addition, in May and July 2004 these four employees executed checkoff authorizations and welfare fund beneficiary designation forms.

Frye testified that on November 1, 2007, he received a telephone call from Union Business Agent Dwight Smith telling him that he saw Respondent's employees performing concrete curb work at a Walmart construction site at 4600 Lafayette Road in Indianapolis. Frye told Smith that the Respondent had a contract with the Union and he should sign up any of the Respondent's employees who was not already a union member. Shortly, thereafter, Smith called him to say that Sheehy did not agree that he was a union contractor, and Frye asked to speak to Sheehy and Smith put him on the phone. Sheehy asked him what was going on and Frye said that he had a contract with the Union. Sheehy said that they did not have a contract, they only had a one-job agreement for the IUPUI job and Frye said no, the Union never signs one-job agreements; they had a favored nations clause in the contract that does not allow for one-job agreements. They "bickered" for a few minutes about the subject and Sheehy said that he would not comply with the contract, but was willing to work something out on that job for Power and Son, a union contractor. Frye told him that there was nothing to work out, they had a contract and, as far as he was

[1] At the hearing, I allowed testimony from Sheehy about his impression of the Respondent's obligation upon signing this and the later acceptance agreement. As will be discussed, infra, because the acceptance agreements and the collective-bargaining agreements that he agreed to be bound by are unambiguous, this parol evidence will not be considered.

concerned, it was worked out. Frye then told him that he had two choices: he could file a grievance or he could turn the issue over to his attorney. Sheehy said that since he had no contract with the Union he had nothing to abide by and, because of what Sheehy said, Frye decided that the best course would be to turn it over to his attorney. By letter dated November 7, 2007, Neil Gath, counsel for the Union, wrote to Sheehy stating that on May 21, 2004, he agreed to be bound to the Union's contract, but that he had recently repudiated that contractual obligation. Counsel concluded by saying that unless Respondent agreed to follow the contract, the Union would file an unfair labor practice charge. There is no evidence of a response from Sheehy, and a charge was filed with the Board on January 24, 2008.

Sheehy testified that when he met Smith at the Walmart jobsite on November 1, 2007, Smith "was pretty emphatic about signing up all our guys." Sheehy told him that he was not to do that and Smith called Frye and gave the phone to Sheehy. Frye told Sheehy that he was bound to their contract for all his jobs and that he was obligated to pay union dues and benefits for all his jobs going back to May 2004. He replied that he didn't feel that he was bound to it, but that he was willing to work out something for the Walmart job.

Respondent produced testimony to establish that from the mid 2004 to November 2007 it was operating as it normally does, out in the open without making any attempt to conceal its operations. Frye testified that for the period May 2004 through November 1, 2007, he was not aware of any jobs that the Respondent was performing in the Union's jurisdiction in the Indianapolis, Indiana area. Beginning in July 2006, the Union received fringe benefit update reports which did not list any contributions made by the Respondent, but Frye did not take any action against the Respondent based on these reports. Frye testified that it was not until Smith saw Respondent at the Walmart jobsite on November 1, 2007, that he was aware that they were working in the area. Sheehy testified that the Respondent owns six trucks and five job trailers, and each has the Respondent's name and telephone number on both sides of the vehicles. He has never tried to hide the fact that he is working on particular jobs: "No and just the opposite, we're trying to let people know we are there. Repeat business is pretty pivotal to our growth."

The 1999 and 2004 contracts are identical in their relevant provisions. The work covered provision includes all work within the recognized jurisdiction of the International Union in highway construction, heavy construction and railroad contracting, utility construction and related work, and it covers all construction labor employees of the signatory employers, with the exception of warehouse or yard employees, superintendents, master mechanics, mechanics, job foremen, civil engineers, or clerks. Article III, bargaining agent, states:

> For the purpose of collective bargaining with respect to wages, hours, and other conditions of employment, the Employer recognizes the Union as the sole and exclusive bargaining agent of all his Employees in a unit consisting of construction laborers who are employed by the Employer on all work and classifications set forth in this Agreement.

Article IV, union security, states, inter alia:

> The Contractor, or Employer, recognizes and acknowledges that the Laborers' International Union of North America, State of Indiana District Council, is the sole representative of all Employees in the classification of all work under its jurisdiction covered by this Agreement for the purposes of collective bargaining.

IV. ANALYSIS

The agreements executed by the Respondent in 2003 and 2004 were 8(f) agreements and, prior to *John Deklawa & Sons*, 282 NLRB 1375 (1987), such agreements could be repudiated by either party and could not be enforced under Section 8(a)(5) of the Act. *Deklawa* changed that by declaring that permissible 8(f) agreements were enforceable, could not be repudiated prior to their termination dates and were enforceable under Section 8(a)(5) of the Act. Whether it is fair to bind the Respondent and his employees to such an agreement, as counsel for the Respondent argued at the hearing and in his brief, is irrelevant. The Respondent signed two 8(f) agreements and is bound to their provisions. *P & C Lighting Center, Inc.*, 301 NLRB 828 (1991). As the Board stated in *Cedar Valley Corp.*, 302 NLRB 823 (1991): "A party may not lawfully repudiate an 8(f) agreement during its term."

Further, the Board and the courts have consistently refused to allow a party to use parole evidence of an alleged oral agreement to vary or contradict the terms of a written agreement. The sole exception to this rule is that where there are sufficient ambiguities or uncertainties in the written agreement, parole evidence will be admissible to resolve these ambiguities in order to determine the parties' intent. *Sansla, Inc.*, 323 NLRB 107, 109 (1997); *Commonwealth Communications, Inc.*, 335 NLRB 765 (2001), enf. denied 312 F.3d 465 (D.C. Cir. 2002). Therefore, the initial issue herein is whether there is any ambiguity or uncertainty in the contracts regarding the scope and the unit coverage of these contracts. I find none. Both the acceptance of working agreements and the collective-bargaining agreements which they refer to are crystal clear. The contract specifically states that it covers all of the Respondent's employees and work within the Union's jurisdiction. In *Sansla,* supra*,* in addition to the employer's name, address, and telephone number, the agreement that the employer executed listed the job that he was performing under: "Location of job." That created enough uncertainty to allow the employer to introduce parole evidence to determine the parties' intent regarding the scope of the agreement. There is no such uncertainty here. The terms and scope of the agreement are clearly and unambiguously set forth. Finally, I find that the fact that it took the Union 3½ years to realize that the Respondent, which was conducting its operations openly, was performing unit work in the area, does not assist the Respondent in establishing that its agreements with the Union were one-job contracts. Rather, it simply establishes that the Union's enforcement efforts were lax. I, therefore, find that by refusing to recognize its obligations under this agreement the Respondent violated Section 8(a)(1)(5) of the Act.

CONCLUSIONS OF LAW

1. The Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.

3. By refusing to adhere to, and by repudiating, the collective-bargaining agreement it agreed to be bound by on May 21, 2004, the Respondent violated Section 8(a)(1)(5) of the Act.

THE REMEDY

Having found that the Respondent engaged in certain unfair labor practices, I recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. I recommend that the Respondent be ordered to implement and adhere to the terms of the collective-bargaining agreement effective for the period April 1, 2004, through March 31, 2009, and to make whole the unit employees for any loss of wages or other benefits that they sustained as a result of the Respondent's repudiation of its responsibilities and obligations under this contract and the earlier one. I also recommend that Respondent be ordered to pay to the appropriate union funds all health, welfare, pension, and other fringe benefits as provided for in these contracts.

On these findings of facts and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Sheehy Enterprizes, Inc., Indianapolis, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with Laborers' Union of North America, State of Indiana District Council, a/w Laborers' International Union of North America, by refusing to adhere to, and by repudiating, a collective-bargaining agreement that it entered into with the Union, the agreement being effective for the period April 1, 2004, through March 31, 2009.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Give effect to the terms of the collective-bargaining agreement effective for the period April 1, 2004, through March 31, 2009, that it agreed to be bound by on May 21, 2004.

(b) Make whole its employees for any wages or other benefits that they may have lost due to the Respondent's failure to abide by the terms of this, and the prior contract and make whole the union funds for fringe benefits that were supposed to be, but were not, paid by the Respondent pursuant to these agreements.

(c) On request, allow the Union, or its funds, to audit its books and records to determine the amount owed to employees and the funds.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Indianapolis, and at all of its jobsites, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 21, 2004.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT fail or refuse to give effect to, or fully comply with, the terms and conditions of employment set forth in the contract we entered into with Laborers' International Union of

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

North America, State of Indiana District Council (the Union) that was effective for the period April 1, 2004, through March 31, 2009.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL give effect to the terms of the contract that we entered into with the Union on May 21, 2004, which agreement is effective from April 1, 2004, through March 31, 2009, WE WILL make you whole for any loss that you suffered, plus interest, due to our failure to apply the terms of our contracts with the Union and WE WILL make the union funds whole for our failure to pay the appropriate amount due to the funds pursuant to the contract.

WE WILL, on request, allow the Union or its funds to audit our books and records to determine the amount we owe to the employees or the funds.

SHEEHY ENTERPRIZES, INC.